

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed September 8, 2004. Reconsideration and allowance of the application and pending claims are respectfully requested.

### **I. Specification Amendments**

An amendment has been made to the specification through this Response to correct an omission identified in the Office Action. Although the amendment adds text to the specification, that text is supported by the original drawings and, therefore, does not comprise new matter.

### **II. Claim Rejections - 35 U.S.C. § 112, Second Paragraph**

Claims 10, 11, and 14 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Given that claims 10, 11, and 14 have been canceled through this response, the rejection is believed to be moot.

### **III. Claim Rejections - 35 U.S.C. § 102(e)**

Claims 1-16 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Maki-Kullas (U.S. Pat. No. 6,650,621). Applicant respectfully traverses this rejection.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983)(emphasis added). Therefore, every claimed feature of the claimed invention must

be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

In the present case, not every feature of the claimed invention is represented in the Maki-Kullas reference. Applicant discusses the Maki-Kullas disclosure and Applicant's claims in the following.

**A. The Maki-Kullas Disclosure**

Maki-Kullas discloses a load balancing routing algorithm. As is described by Maki-Kullas, an object of the algorithm is to find "the fastest route among a number of routes from a computer node to a destination in an EP network." Maki-Kullas, column 4, lines 40-43. That object is satisfied by "replicating connection setup packets through each route to be tested, ensuring that reply packets come back through the same route, and be selecting the fastest route." Maki-Kullas, column 4, lines 45-48.

As is further described by Maki-Kullas (column 5, lines 4-20):

Preferably, the selection of the route is performed on the basis of round trip times measured by a new method using packet replication. One or more IP packets carrying connection setup messages of a second protocol used on top of the IP protocol are replicated to traverse to the same end node in the external network through the available routes. The source addresses of the replicated packets are translated to addresses corresponding to the particular route used for transmission of the particular replicated packet to ensure, that the return packets come back the same route. the that provides the fastest response times from the end node is selected to be used for the new connection. The response times can be determined from the transmission of the initial packet to the reception of the response packet to the initial packet, or to the reception

of a certain later packet, such as the first packet after setup signalling containing payload data.

Significantly, Maki-Kullas says nothing about enabling a user to select rules or attributes that will be used to make the route selection. Furthermore, Maki-Kullas is silent as to selection of routes or pathways within a single computer (i.e., the Maki-Kullas method is only applied to networks of computers).

#### **B. Applicant's Claims**

Applicant claims methods and apparatuses for transferring data. For example, with reference to independent claim 1, Applicant claims (emphasis added):

1. A method for transferring data between first and second data processing applications, both of which operate on said data, said method comprising:

measuring a first data transfer metric for a first data transfer pathway between said first process and said second process;

measuring said first data transfer metric for a second data transfer pathway between said first process and said second process;

comparing the first data transfer metric for the first pathway to the first data transfer metric for the second pathway; and

*selecting one of said first and second data transfer pathways for subsequent data transfers based upon the result of said comparing, and upon at least one user-specified data transfer rule.*

As is noted above in the description of the Maki-Kullas disclosure, Maki-Kullas does not disclose enabling a user to select rules or attributes that will be used to make the route selection. Instead, the selection of a given route or pathway is made independent of any user preference and only depends upon which route or pathway

provides the highest data transfer rate. It therefore follows that Maki-Kullas does not teach or suggest “selecting one of said first and second data transfer pathways for subsequent data transfers based upon the result of said comparing, and upon at least one user-specified data transfer rule”, as is explicitly recited in Applicant’s independent claim 1.

Applicant acknowledges that, as is identified in the Office Action, Maki-Kullas discloses that the criteria used to make the route selection determination can be of “many different kinds.” That disclosure, however, is insufficient to anticipate or render obvious Applicant’s explicit recital of a “user-specified data transfer rule”. In other words, although Maki-Kullas makes a vague statement as to different kinds of criteria being possible, Maki-Kullas fails to disclose the specific type of criteria called out in claim 1 (i.e., user-specified criteria).

The aforementioned differences between the Maki-Kullas invention and Applicant’s claimed invention are significant. To cite an example, because the Maki-Kullas invention does not provide for user selection of the rules or “criteria” that will be applied in selecting a route or pathway for data, the Maki-Kullas invention lacks the flexibility of Applicant’s claimed invention. With Applicant’s invention, several criteria other than data transfer rate can be used to control selection of the pathway (see Applicant’s specification).

At least in view of the foregoing, Applicant submits that independent claim 1, and the claims that depend therefrom, are allowable over Maki-Kullas. Applicant therefore requests that the rejection be withdrawn as to those claims.

Turning to independent claim 5, Applicant claims (emphasis added):

5. (Currently amended) A method for transferring data between first and second data processors which operate on said data, said method comprising:

measuring a first data transfer metric for a first data transfer pathway between said first processor and said second processor;

measuring said first data transfer metric for a second data transfer pathway between said first processor and said second processor;

comparing the first data transfer metric for the first pathway to the first data transfer metric for the second pathway; and

***selecting one of said first and second data transfer pathways for subsequent data transfers between said first and second processors based upon the result of said comparing, and upon at least one user-specified data transfer rule.***

As is noted above in relation to claim 1, Maki-Kullas does not teach or suggest “selecting one of said first and second data transfer pathways for subsequent data transfers based upon the result of said comparing, and upon at least one user-specified data transfer rule”. For at least this reason, Maki-Kullas does not anticipate independent claim 5, or the claims that depend therefrom. Applicant therefore requests that the rejection also be withdrawn as to those claims.

With reference next to independent claim 13, Applicant claims (emphasis added):

13. A computer system that minimizes data transfer operations, comprising:

a data network having a plurality of data transfer pathways through which data is transferred;

at least first and second processors coupled to said network;

a data transfer manager coupled to the first and second processors and coupled to the data network, *said data transfer manager being configured to* determine data transfer metrics of a plurality of data transfer pathways and *select a data transfer pathway through which subsequent data transfers will occur based upon at least one user-selected transfer attribute.*

Regarding claim 13, Maki-Kullas does not teach or suggest a data transfer manager that is configured to “select a data transfer pathway through which subsequent data transfers will occur based upon at least one user-selected transfer attribute”. As is noted above in relation to claim 1, the Maki-Kullas invention does not provide for such user control. For at least this reason, Applicant submits that independent claim 13, and the claims that depend therefrom, are allowable over Maki-Kullas. Applicant therefore requests that the rejection be withdrawn as to those claims.

#### **IV. Canceled Claims**

As identified above, claims 10, 11, and 14 have been canceled from the application through this Response without prejudice, waiver, or disclaimer. Applicant reserves the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

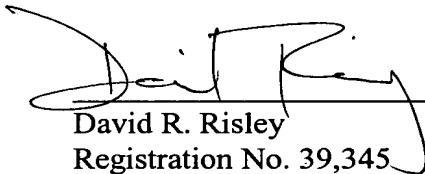
#### **V. New Claims**

As identified above, claims 17-33 have been added into the application through this Response. Applicant respectfully submits that these new claims describe an invention novel and unobvious in view of the prior art of record and, therefore, respectfully requests that these claims be held to be allowable.

### CONCLUSION

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

  
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10-25-04

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